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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

83-0591

1 MAR 1983

The Honorable George Bush
President of the Senate
Washington, DC 20510

Dear Mr. President:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act (FOIA) during calendar year 1982.

During 1982, 2,278 requests for information were logged and put into processing by the Agency, of which 1,010 were handled under the Freedom of Information Act. Several hundred additional request letters were received during the year but not formally processed pending receipt of additional information from the requesters. These incomplete requests were, without exception, requests for access to personal records, which, under the Agency's regulations, are usually processed under the provisions of the Privacy Act of 1974 (5 U.S.C. 522a) rather than the Freedom of Information Act. Production/workload statistics for CY 1982 are enclosed at Tab A. (Some of these statistics are necessarily tentative inasmuch as we sometimes have to reactivate "closed" cases or are able to "close out" cases retroactively.)

During CY 1982 the number of requests for information decreased by 752. Nevertheless, the Agency maintained its large expenditure of manpower on Freedom of Information, Privacy, and Executive Order requests, devoting the equivalent of 128 full time employees to this effort, despite the critical need to apply the expertise of our intelligence professionals to the Agency's primary mission. The dollar costs for personnel to sustain this effort amounted to over \$3.7 million. Of this total, 59% (\$2.2 million) was devoted to FOIA. During CY 1982 we were able to reduce our backlog of initial cases by 364, some of which were among the more complex cases that were contributing to the log jam in our queue system. Equally encouraging is the reduction in the number of cases awaiting processing in the administrative appeal phase. This year the Agency was able to reduce this backlog to 65 cases.

The administrative burden to the Agency over the past years has been considerable. Since 1975 we estimate that the

Agency has expended a total of \$21.3 million (\$10.9 million for FOIA) in just personnel costs for processing all requests for information. The benefit to the public resulting from this expenditure has been marginal at best. To be sure, some of the information released has benefited selected segments of the public. Yet, such instances are rare. Most records held by CIA are classified under the criteria of E.O. 12356 or predecessor orders and/or involve intelligence sources and methods. As such, this information is exempted from access under the Freedom of Information Act. When feasible, segregable portions of otherwise exempt records are released, but the public benefit arising from the disclosure of fragmentary and often inaccurate raw intelligence is dubious, and the result is sometimes even misleading. The provisions of the Act which permit the Agency to charge fees for record searches and for duplication are grossly inadequate for recovering even minimal costs. For all years, the Agency has collected a total of \$76,207 in fees. When compared with expenditures for administering just the FOIA, this amounts to less than one cent collected for every dollar spent. As anticipated, the Department of Justice guidelines promulgated in late December of 1980 increased the number of fee waivers granted. The Agency was able to collect only \$11,207 in fees and advance deposits during CY 1982. This, however, represents a 45% increase over CY 1981 collections. New guidelines issued in January 1983 may help alleviate the drain on public monies somewhat, in that the guidelines emphasize the "public benefit" aspect more strongly. Nevertheless, with review time constituting our greatest cost, FOIA processing can never become anywhere near self-supporting.

As explained in earlier reports, the Agency also faces some real problems in seeking to meet the time deadlines stipulated in the Act, and we believe these complicating factors are worth repeating. Because of the decentralized character of our systems of records, a number of files and indices must usually be searched to process a typical request. For example, a reasonably simple request may require as many as 21 records systems to be searched, a complex request over 100. Whenever relevant records are located, these must be reviewed with painstaking care by knowledgeable officers of the CIA to ensure no information is released which might damage national security, harm U.S. foreign relations, or reveal the identities of intelligence sources or methods. This critical analysis requires the expenditure of an inordinate amount of manpower. Moreover, it cannot be entrusted to FOIA officers hired just for the purpose of review, as is done in other agencies. Rather, this analysis and review requires the exercise of careful judgment by professional intelligence officers who have primary responsibility for vital programs of intelligence collection and analysis for the President and other policymakers. Experienced operations officers and analysts cannot be easily or readily acquired on the open market. It takes years of experience and training to develop a

top-quality intelligence officer. Resources the Agency allocates to the administration of the FOIA are in competition with priority intelligence requirements. Already, intelligence officers are being diverted from their primary duties, and, as DCI William J. Casey has testified, this diversion is impacting upon vital intelligence missions. As long as the volume of requests remains high, it seems unlikely that the Agency will be in a position in the foreseeable future to substantially reduce the processing backlog to the point where we would be able to respond within the time limits specified by the Act. In the meantime, in an effort to be fair to all, we have continued to follow the policy of handling requests on a first-received, first-processed basis. Unless a request essentially duplicates a previous request, long delays are inevitable under this policy. Some requesters, understandably impatient over the lack of response, file administrative appeals or go into early litigation, thereby further slowing the process as we move resources to meet the priority demands of litigation.

Although the administrative burden in terms of cost and diversion of professional expertise is the principal difficulty the Act poses to the Agency -- especially in view of the marginal value to the public of the material released -- there is the additional factor of its effect on our intelligence collection effort, as Director Casey and other senior officials have stated on numerous occasions. To operate effectively as a foreign intelligence gathering organization, we must be able to enlist the cooperation of individuals and foreign governments. Many potential sources have refused this cooperation, considering the risk of inadvertent disclosure too great, in part because our records -- even the most sensitive ones -- are subject to the provisions of FOIA. We can and do assure our sources that the Act provides exemptions to protect from disclosure both classified material and information relating to intelligence sources and methods and that we employ multiple layers of review to further ensure protection. Some, however, remain unconvinced. Many are aware that there is the high potential for error, and, despite the elaborate precautions, mistakes have been made resulting in the release of classified information. Furthermore, the more knowledgeable know that courts do review Agency classification decisions and that the potential exists for the Agency to be overruled.

In summary, the diversion of expertise from our primary mission, the cost, the time constraints required by FOIA, and the negative perceptions on the part of potential sources are the major problems we face in complying with the FOIA.

Nevertheless, we believe the Agency's performance is a conscientious one, and we continue to look for ways in which it can be improved without impairing national security.

Sincerely,

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STAT

Harry E. Fitzwater
Deputy Director
for
Administration

Enclosures

Production/Workload Statistics

	<u>FOIA</u>	<u>PA</u>	<u>EO*</u>	<u>TOTALS</u>	<u>%</u>
Workload:					
Cases carried over from 1981	1522	1356	225	3103	(58)
Cases logged during 1982	1010	1016	252	2278	(42)
Totals	2532	2372	477	5381	
Actions taken:					
Granted in full	131	109	48	288	(11)
Granted in part	200	318	92	610	(23)
Denied in full	134	87	51	272	(10)
No records found	95	656	0	751	(28)
No CIA records found	13	43	0	56	(2)
Cancelled	417	38	1	456	(17)
Withdrawn	40	18	1	59	(2)
Referred elsewhere	37	1	1	39	(2)
Early appeal	43	3	0	46	(2)
Early litigation	62	3	0	65	(3)
Totals:	1172	1276	194	2642	(100)
Cases carried over to 1983	1360	1096	283	2739	
Change in backlog	-162	-260	+58	-364	(-12)

*These are requests processed under the mandatory classification review provision of Executive Orders 12065 and 12356. Most of them are either referrals from the Presidential Libraries or declassification requests from other Federal agencies.

FREEDOM OF INFORMATION ACT
ANNUAL REPORT TO THE CONGRESS FOR THE YEAR 1982

1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 334

2. Authority relied upon for each such determination:

(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., requests) invoked</u>
(b)(1)	265
(b)(2)	3
(b)(3)	279
(b)(4)	6
(b)(5)	12
(b)(6)	44
(b)(7)	5
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., requests) invoked</u>
50 U.S.C. 403 (d)(3) and/or 50 U.S.C. 403g	279

(c) Other authority: None

There were 707 other cases in which the requesters were neither given access to nor denied the records sought. None of these cases was regarded as a denial, however, inasmuch as the Agency was either prepared to act upon the request or there proved to be no records to act upon. Accordingly, they have not been included in the 334 figure provided in answer to question No. 1, above. In 95 instances, our searches uncovered no records relevant to the request. In 13 other cases, we found no CIA-originated records, but did locate in our files pertinent third-agency documents--which were subsequently referred to the agency of origin for review and direct response to the requesters. There were 37 instances where the information requested did not fall under CIA's jurisdiction, and the requests were thus referred to the agency or agencies having cognizance over the records. In 43 cases, requesters appealed on the basis of our failure to respond within the statutory deadline; in another 62 cases, the requesters went into litigation for the same reason. In each of these instances, therefore, the initial processing of the requests progressed into the Agency's appellate or litigation channels. Forty requests were withdrawn by the requesters after processing had commenced, but before action on them could be completed. Finally, 417 cases were cancelled by the Agency because of

the failure of requesters to respond to letters asking for clarification, additional identifying information, notarized releases from third parties, fee payments, fee deposits, or written commitments that all reasonable search and/or copying fees would be paid, etc. In each of the latter cases, at least 90 days had elapsed without a reply from the requester before action was taken to discontinue processing.

3. Total number of intra-agency appeals from adverse initial decisions made pursuant to subsection (b)(6): 39

In 14 additional cases, requests which were initially processed under the provisions of the Privacy Act were processed under the Freedom of Information Act upon appeal, in accord with the wishes of the appellants. These were requests for access to personal records, which the CIA usually processes under the Privacy Act rather than the Freedom of Information Act. Also, based upon the failure of the Agency to reply to Freedom of Information requests within 10 working days, 43 appeals were received.

(a) Number of appeals in which, upon review, request for information was granted in full: 0

(b) Number of appeals in which, upon review, request for information was denied in full: 33

(c) Number of appeals in which, upon review, request was denied in part: 31

4. Authority relied upon for each such appeal determination:

(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., appeals) invoked</u>
(b)(1)	80
(b)(2)	1
(b)(3)	85
(b)(4)	0
(b)(5)	1
(b)(6)	17
(b)(7)	4
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., appeals) invoked</u>
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	85

5. Names and titles of those persons who, on appeal, were responsible for the denial in whole or in part of records requested and the number of instances of participation of each:

<u>Name</u>	<u>Title</u>	<u>No. of instances of participation</u>
Briggs, Charles A.	Inspector General	2
Dirks, Leslie C.	Deputy Director for Science and Technology	3
Hineman, Richard E.	Deputy Director for Science and Technology	3
Fitzwater, Harry E.	Deputy Director for Administration	35
Gates, Robert M.	Deputy Director for Intelligence	12
Stein, John H.	Deputy Director for Operations	105

6. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a)(4)(F): etc.: None

7. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act 5 U.S.C. 552):

See Tab B.

8. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available:

See Tab C for a copy of the fee schedule.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1982 was \$11,206.70.

9. A. Availability of records:

As the CIA does not promulgate materials as described in 5 U.S.C. 552(a)(2)(A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

B. Costs

A total of 229,788.7 actual man-hours of labor was devoted during calendar year 1982 to the processing of Freedom of Information Act, Privacy Act, and mandatory classification review requests, appeals, and litigation. Taking into account leave and holidays, this would equate to approximately 128 full-time personnel. We estimate the average grade for professional employees involved in these programs at GS-12/5, and for clerical employees, GS-06/4. The funds expended during calendar year 1982 on personnel salaries, if overtime payments are ignored, would thus amount to approximately \$3.4 million. If fringe benefits such as retirement and hospitalization are factored in as amounting to 10 percent of the salaries, the total personnel costs come to just over \$3.7 million. Of this total, approximately \$2.2 million can be attributed to the Freedom of Information Act.

C. Compliance with time limitations for Agency determinations:

(I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were seldom in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have, accordingly, explained the problem to requesters and appellants and apprised them of their rights under the law.

(II) Provide the total number of instances where court appeals were taken on the basis of exhaustion of administrative procedures because the Agency was unable to comply with the request within the applicable time limits: 29

Of these, 22 actions were brought under the FOIA and seven were brought under both the FOIA and PA. It should be noted that in one instance a requester filed an appeal under the PA and subsequently brought suit under both Acts.

(III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time: 17

Copies of the pertinent court orders are attached at Tab D. No written order was issued by the court in Shaw v. CIA CA 82-0757; additional time was granted pursuant to an oral agreement at status call.

D. Internal Memoranda:

See Tab E.

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